

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP GRAY,

Plaintiff-Appellant,

v

DETROIT HEALTH CORPORATION, d/b/a
FITNESS USA, FITNESS USA CORPORATION,
and FITNESS MANAGEMENT
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

April 16, 2002

No. 229614

Wayne Circuit Court

LC No. 99-916145-NZ

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition, and denying plaintiff's request to amend his complaint. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants moved for summary disposition pursuant to MCR(C)(7), (8) and (10). In response to the motion, plaintiff sought to amend his original complaint to raise a claim under the Civil Rights Act, MCL 37.2101 *et seq.* The trial court found that the amendment would be futile because the statute of limitations ran. We agree.

An action alleging employment discrimination under the civil rights act must be brought within three years after the cause of action accrued. *Meek v Michigan Bell Telephone Co*, 193 Mich App 340, 343; 483 NW2d 407 (1991). In *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505; 398 NW2d 368 (1986), the Supreme Court recognized an exception to the statute of limitations for continuing violations. The exception exists when an employee challenges a series of discriminatory acts sufficiently related to constitute a pattern where only one of the acts occurred within the limitations period. *Id.* at 528. Continuing harassment does not establish a continuing violation if none of the relevant conduct occurred within the limitations period. *Id.* at 539.

Here, the last tangible discriminatory act was the promotion of another employee over plaintiff on May 20, 1996. This act was outside the limitations period, and cannot support a continuing violation. The only other continuing act noted by plaintiff was the existence of swastikas on a storeroom wall. The most important factor to be considered in determining

whether a continuing violation exists is the degree of permanence of the discriminatory act, and whether it should trigger the employee's awareness of and duty to assert his rights. *Id.*, 538. Plaintiff was aware of the swastikas for years and he was aware of their discriminatory nature, but he did not bring a timely complaint. There is no basis for finding a continuing violation in this case. The trial court properly denied plaintiff's request to amend his complaint where the amendment would be futile. *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh